IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF MISSISSIPPI
OXFORD DIVISION

CEDRIC NESBIT and
DAVID HAYES — PLAINTIFFS

v. — NO. 3:14cv231-DMB-JMV

ASHLEY FURNITURE INDUSTRIES, INC.;
JAMES SHOCKEY; WAYMON BARBER;
and BOB LLEWELYN — DEFENDANTS

COMPLAINT

COMES NOW Plaintiffs, by and through counsel, The Law Offices of Matthew Reid Krell, and for Plaintiffs' Complaint, Plaintiffs state:

PARTIES AND JURISDICTION

1. Plaintiff Cedric Nesbit ("Nesbit") is a resident and citizen of Benton County, Mississippi. Plaintiff David Hayes ("Hayes") is a resident and citizen of Tippah County, Mississippi. Defendant Ashley Furniture Industries, Inc. (hereafter "Ashley") is a foreign corporation with regard to the State of Mississippi that is authorized to do business in the State of Mississippi. Defendants James Shockey ("Shockey"), Waymon Barber ("Barber"), and Bob Llewelyn ("Llewelyn") are all residents and citizens of the State of Mississippi. This is an action brought under the Civil Rights Act of 1964 for race discrimination, for retaliation based upon violations of the Civil Rights Act of 1964 by Defendants against Nesbit, opposition to an illegal activity and retaliation for such opposition, conspiracy under 42 U.S.C. § 1985, and for promissory estoppel. Plaintiffs timely filed a Charge of Discrimination with the Equal Employment Opportunity Commission (hereafter "EEOC") and now bring this present case based upon receipt of a Right to Sue Letter from the EEOC. Accordingly, this Court has federal question subject matter jurisdiction under 28 U.S.C.

1331. Since the acts giving rise to this present cause of action all occurred within the jurisdiction of this Court, venue is proper under 28 U.S.C. 1391(b). Further, this Court has supplemental jurisdiction over Mississippi State Law claims under 28 U.S.C. 1367.

GENERAL ALLEGATIONS OF FACT

2. Hayes began working for Defendants on or about September 1, 2011.

3. Nesbit began working for Defendants on or about November 21, 2011.

4. At all times during Plaintiffs' employment with Defendants, Plaintiffs performed their jobs satisfactorily.

5. Neither Nesbit nor Hayes ever resigned from Ashley.

6. During Plaintiffs' tenure with Defendants, Plaintiffs worked for Defendants at Ashley's location at 15900 Highway 15, Ripley, Mississippi 38663.

7. Nesbit worked in Receiving for Defendants.

8. Hayes worked as a Pallet Unloader for Defendants.

9. Shockey was Ashley's South Plant Supervisor and a direct supervisor of both Plaintiffs.

10. Barber was Ashley's North Plant Supervisor and a direct supervisor of both Plaintiffs.

11. Llewellyn was Ashley's Human Resources Manager for its Ripley, Mississippi operations.

12. In December 2011, Shockey began treating both Nesbit and Hayes differently from their Caucasian counterparts.

13. Even though Nesbit worked in Receiving and Hayes was a Pallet Unloader, Shockey order both Plaintiffs to begin performing custodial jobs in the warehouse.

14. Shockey did not order any Caucasian counterparts of Plaintiffs to perform custodial jobs of this nature.

15. Throughout the rest of the time that Nesbit and Hayes worked for Ashley, Shockey would routinely assign each of them menial, custodial tasks that were not part of their job responsibilities while never assigning such tasks to Caucasians.

16. Beginning in March 2012, Shockey began openly targeting Hayes with abusive language and racial slurs.

17. Barber joined in on these attacks against Hayes using racial slurs on numerous occasions directly in front of Hayes.

18. Neither Shockey nor Barber used racial slurs or abusive language toward Caucasians who worked for Defendants.

19. Hayes complained to Llewelyn about the way he was being treated by Shockey and Barber.

20. Llewelyn failed to ever investigate any of the allegation made by Hayes against Shockey or Barber.

21. Llewelyn never took any corrective action against Shockey or Barber based on Hayes' complaints.

22. After months of being subjected to racial slurs and abusive language, Shockey falsely accused Hayes of misconduct in August 2012.

23. Based upon this false charge of misconduct, Shockey created a written warning against Hayes that was approved by Llewelyn.

24. During August 2012, Shockey informed Hayes that his position as a Pallet Unloader was being was being eliminated and being moved to a different location.

25. Hayes was terminated by Llewelyn and Shockey on August 24, 2014.

26. Two weeks after Hayes was terminated, the Pallet Unloader position returned to the Ashley location where Hayes had been employed.

27. The Pallet Unloader position at the Ashley location in Ripley, Mississippi was never eliminated by Ashley.

28. The supposed elimination of the Pallet Unloader position at the Ripley, Mississippi location was used as a means of covering up race discrimination against Hayes and Defendants' failure to abide by Ashley's Employee Handbook with regard to disallowing racial discrimination and failing to properly investigate allegations of such discrimination when it was alleged by Hayes against Barber and Shockey.

29. While working for Defendants, Nesbit received written warnings for absenteeism.

30. These warnings were written by Shockey and given to Nesbit with the approval of Barber and Llewelyn.

31. These warnings were for missed days upon which Nesbit went to doctor's and dentist's appointments.

32. Shockey had been previously informed and approved of Nesbit's intention to be absent for these doctor's and dentist's appointments.

33. These warnings issued to Nesbit spanned dates in the months of September, October, and November 2012.

34. Nesbit complained to Barber about the warnings given to Nesbit by Shockey.

35. Nesbit also complained to Llewellyn about Shockey writing up Nesbit for these absences specifically identifying to Llewelyn that Nesbit was concerned this treatment was occurring based upon his race.

36. After Nesbit complained to Llewelyn, Shockey told Nesbit that he would tear up the warnings, but Shockey never actually did this.

37. Shockey used racial slurs, words specifically identifying Nesbit by race, and curse words when referring to Nesbit after Nesbit asked Shockey if he had actually torn up the warnings or not.

38. Llewelyn never conducted a formal investigation of Shockey's actions against Nesbit and never took any corrective action against Shockey.

39. After Nesbit complained about Shockey, Shockey began changing the requirements of Nesbit's job description even further in an attempt to force Nesbit to resign.

40. Shockey ordered Nesbit to begin removing spider webs from the loading area including spider webs that Nesbit believed to have been made by poisonous spiders.

41. When Nesbit asked Shockey to stop repeatedly changing his duties, Shockey told Nesbit that he "might as well quit" because Shockey was not going to stop until Nesbit resigned.

42. Nesbit again went to Barber in December 2012, complaining about Shockey's treatment of Nesbit including how Shockey was treated Nesbit differently than Shockey treated Nesbit's Caucasian counterparts.

43. Nesbit also informed Llewelyn of how Shockey was treating him differently than Nesbit's Caucasian counterparts.

44. Neither Barber nor Llewelyn took any steps to correct these violations of Ashley's Employee Handbook or to address the discriminatory actions of Shockey even after they were brought to Barber's attention by Nesbit.

45. The violations of Ashley's Employee Handbook as well as the discriminatory actions of Shockey against Nesbit continued until Nesbit's termination.

46. As a means of covering up the claims of discrimination and retaliation that Nesbit made against Shockey, Defendants created a false reason for terminating Nesbit.

47. Nesbit was terminated from Ashley on December 12, 2012, by Llewelyn and Shockey with the approval of Barber.

48. Nesbit was told that his termination was a part of an overall reduction in force when no such reduction in force ever actually took place.

49. The reason for Nesbit's termination was a pretext for covering up race discrimination and retaliation.

50. Llewelyn's failure to investigate the claims of race discrimination along with Barber's ratification of the termination of Nesbit by Llewelyn and Shockey were blatant violations of Ashley's Employee Handbook.

51. Upon information and belief, other similarly situated Caucasian employees of Defendants who have committed more serious infractions than those Defendants accused Plaintiffs of committing have been allowed to continue their employment with Defendants.

52. Upon information and belief, other similarly situated Caucasian employees of Defendant who have not complained about race discrimination at Ashley have been allowed to continue their employment with Defendants.

53. After discharge, Plaintiffs timely filed Charges of Discrimination with the EEOC.

54. Plaintiffs now timely bring this cause of action within 90 days after receipt of Plaintiffs' Right to Sue Letters from the EEOC. See Exhibit A.

COUNT I – DISCRIMINATION AND RETALIATION AGAINST NESBIT BASED UPON RACE

55. Nesbit re-alleges the foregoing as if fully set out herein.

56. Nesbit has a clearly established right to be free from race discrimination under the Constitution of the United States.

57. Nesbit brings this action under 42 U.S.C. 1981 because of the deprivation of Nesbit's constitutional rights by Defendants as granted under the Equal Protection Clause and the Due Process Clause.

58. Defendants have retaliated against Nesbit for Nesbit's complaints concerning race discrimination.

59. As a direct and proximate cause of Defendant's actions as alleged herein, Nesbit has lost wages, lost fringe benefits, and suffered both severe mental and emotional distress in an amount to be proven at trial.

60. Defendants' actions have been so egregious so as to warrant the imposition of punitive damages.

COUNT II – DISCRIMINATION AGAINST HAYES BASED UPON RACE

61. Hayes re-alleges the foregoing as if fully set out herein.

62. Hayes has a clearly established right to be free from race discrimination under the Constitution of the United States.

63. Hayes brings this action under 42 U.S.C. 1981 because of the deprivation of Hayes' constitutional rights by Defendants as granted under the Equal Protection Clause and the Due Process Clause.

64. As a direct and proximate cause of Defendants' actions as alleged herein, Hayes has lost wages, lost fringe benefits, and suffered both severe mental and emotional distress in an amount to be proven at trial.

65. Defendants' actions have been so egregious so as to warrant the imposition of punitive damages.

COUNT III – OPPOSITION TO AN ILLEGAL ACTIVITY AND RETALIATION FOR SUCH OPPOSITION

66. Plaintiffs re-allege the foregoing as if fully set out herein.

67. Under Mississippi State Law, an employee who reports an illegal action of his employer to his employer and is then discharged falls within a narrow public policy exception to the general at will employment doctrine. *See McArn v. Allied Bruce-Terminix Co., Inc.* 626 So. 2d 603 (1993).

68. Plaintiffs repeatedly reported to Ashley that illegal actions were taking place at Ashley.

69. These reports of illegal activity were temporal to the termination of Plaintiffs by Ashley.

70. As a direct and proximate cause of Ashley's actions as alleged herein, Plaintiffs have lost wages, lost fringe benefits, and suffered both severe mental and emotional distress in an amount to be proven at trial.

71. Ashley's actions have been so egregious so as to warrant the imposition of punitive damages.

COUNT IV – CONSPIRACY UNDER 42 U.S.C. § 1985

72. Plaintiffs re-allege the foregoing as if fully set out herein.

73. Plaintiffs have a right to enjoy the rights and privileges of a United States citizen, including the right to be free from sexual discrimination in employment.

74. Defendants Shockey, Barber, and Llewelyn conspired to terminate Plaintiffs' employment because of their race as well as their complaints of racial discrimination at the hands of Shockey and Barber.

75. Defendants Shockey, Barber, and Llewelyn acted in furtherance of this conspiracy by taking the following actions: retaliating against Plaintiffs for making complaints of racial discrimination, refusing to properly investigation complaints of racial discrimination, openly participating in acts of racial discrimination after being informed of complaints of such discrimination, terminating Plaintiffs for false reasons, manufacturing

disciplinary actions to cover up discrimination, and repeatedly changing the job duties of the Plaintiffs.

76. Defendants Shockey, Barber, and Llewelyn acted in their own self interests and contrary to the interests of Ashley when engaging in this conspiratorial activity.

77. As a direct and proximate cause of the actions and omissions of Defendants Shockey, Barber, and Llewelyn, Plaintiffs have suffered severe mental and emotional distress, lost wages, lost fringe benefits, lost earning capacity, and has incurred medical expenses which would not otherwise have been incurred.

78. The act of Shockey, Barber, and Llewelyn have been in willful, intentional, and malicious violation of the law and are so egregious so as to warrant the imposition of punitive damages.

COUNT V – PROMISSORY ESTOPPEL

79. Plaintiffs re-allege the foregoing as if fully set out herein.

80. Defendants provided Plaintiffs with a handbook that included internal processes by which employees were guaranteed protection against racial discrimination and retaliation along with processes by which complaints about such treatment would be properly investigated and actions taken against anyone found to be committing racial discrimination or retaliation.

81. Defendants posted information regarding Plaintiffs' right to be free from racial discrimination and retaliation in a conspicuous place where all employees could see such a posting.

82. Plaintiffs experienced racial discrimination at the hands of Defendants and properly reported such discrimination yet Defendants did not abide by Defendants' own policies providing for such reporting and promising not to retaliate against reporters of racial discrimination as posted by Defendants at Plaintiffs' worksite.

83. Plaintiffs regarded the ability to report racial discrimination and not face retaliation for making such a report as outlined in Defendants' handbook and posted by Defendants as a promise to abide by federal law and Defendants' own internal policies regarding such reporting.

84. Plaintiffs reasonably regarded the policies as outlined in Defendants' handbook as a promise to abide by federal law and Defendants' own internal policies regarding race discrimination and retaliation.

85. Defendants intended for Plaintiffs to regard Defendants' handbook as a promise that Defendants would abide by the policies regarding the reporting of race discrimination free from retaliation while working for Defendants as outlined in Defendants' handbook.

86. Plaintiffs did, in fact, reasonably rely upon Defendants' promise to abide by its own policies as outlined in Defendants' handbook.

87. Defendants failed to abide by Defendants' own policies as outlined in Defendants' handbook regarding the reporting of race discrimination free from retaliation.

88. Due to Plaintiffs' reliance on Defendants' promise to abide by the race discrimination and retaliation policies as outlined in Defendants' handbook, Plaintiffs have experienced an injustice in the form of their terminations and have been damaged.

89. As a direct and proximate cause of Defendants' acts and omissions alleged herein, Plaintiffs have lost wages, lost fringe benefits, lost earning capacity, and incurred other damages in an amount to be proven at trial.

90. Defendants' actions have been willful, such that the Plaintiffs are entitled to an award of liquidated and punitive damages.

COUNT VI: RACE DISCRIMINATION AND RETALIATION UNDER TITLE VII AS TO NESBIT

91. Nesbit re-alleges the foregoing as if recited verbatim herein.

92. Nesbit has a right to be free from racial discrimination and retaliation in employment under Title VII of the Civil Rights Act of 1964, as amended.

93. Ashley employs over fifteen employees and meets the revenue requirements to be a covered employer under Title VII of the Civil Rights Act of 1964, as amended.

94. Nesbit brings this action under Title VII of the Civil Rights Act of 1964, as amended, to redress Ashley's discrimination against him on the basis of race.

95. Defendants have retaliated against Nesbit because of his complaints about race discrimination, in violation of Title VII of the Civil Rights Act of 1964, as amended.

96. Nesbit brings this action after receipt of a Right to Sue letter from the EEOC, issued within ninety days of this filing.

97. As a direct and proximate cause of Defendants' acts and omissions alleged herein, Nesbit has lost wages, lost fringe benefits, lost earning capacity, and incurred other damages in an amount to be proven at trial.

98. Defendants' actions have been willful, malicious, and intentional, such that Nesbit is entitled to punitive damages.

COUNT VII: DISCRIMINATION UNDER TITLE VII AS TO HAYES

99. Hayes re-alleges the foregoing as if recited verbatim herein.

100. Hayes has a right to be free from racial discrimination in employment under Title VII of the Civil Rights Act of 1964, as amended.

101. Ashley employs over fifteen employees and meets the revenue requirements to be a covered employer under Title VII of the Civil Rights Act of 1964, as amended.

102. Hayes brings this action under Title VII of the Civil Rights Act of 1964, as amended, to redress Ashley's discrimination against him on the basis of race.

103. Hayes brings this action after receipt of a Right to Sue letter from the EEOC, issued within ninety days prior to this filing.

104. As a direct and proximate cause of Defendants' acts and omissions alleged herein, Hayes has lost wages, lost fringe benefits, lost earning capacity, and incurred other damages in an amount to be proven at trial.

105. Defendants' actions have been willful, malicious, and intentional, such that Hayes is entitled to punitive damages.

WHEREFORE, Plaintiffs pray for appropriate compensatory damages exceeding $75,000, for punitive damages, for reasonable attorneys' fees, for costs, for a trial by jury, and for all other proper relief.

Respectfully submitted,

/s Matthew Reid Krell
Matthew Reid Krell (MSB#103154)
The University of Alabama
Department of Political Science
1805 8th Ave., #121
Tuscaloosa, AL 35401
matthewrkrell@gmail.com
662-469-5342